

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK COUNTY

SUPREME JUDICIAL COURT
No. DAR-

APPEALS COURT
No. 2017-P-0531

COMMONWEALTH

v.

MARIEZEL VALLEJO

DEFENDANT'S APPLICATION FOR DIRECT APPELLATE REVIEW

REBECCA KILEY
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ATTORNEY FOR MARIEZEL VALLEJO
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August, 2017.

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REQUEST FOR DIRECT APPELLATE REVIEW

Following the defendant's admission to sufficient facts on one charge of operating under the influence of alcohol, a restitution hearing was held in the Central Division of the Boston Municipal Court. The judge determined that the victim in the case had been fully compensated by the defendant's insurance company for the loss of her car, which was struck, while parked, by the defendant's car. Nonetheless, the judge ordered the defendant to pay the victim \$140 to compensate her for the time that she spent at the restitution hearing.

Our common law holds that restitution is "limited to economic losses caused by the defendant's [criminal] conduct." Commonwealth v. McIntyre, 436 Mass. 829, 834 (2002). This Court has never held that such losses may include compensation for time spent at a restitution hearing. The defendant requests, pursuant to Mass. R. App. P. 11, that this Court grant direct appellate review in this matter, and hold that a defendant cannot be required to pay a victim for attending a restitution hearing. Such a conclusion is necessary to protect the defendant's right to a restitution hearing, which adheres regardless of her poverty, and would be consistent with widely-accepted principles in the analogous civil context.

STATEMENT OF PRIOR PROCEEDINGS

The defendant, Mariezel Vallejo, was charged on December 21, 2015 in the Charlestown Division of the Boston Municipal Court with one count of leaving the scene of property damage, G.L. c. 90, § 24(2)(a), and one count of operating under the influence of alcohol, G.L. c. 90, § 24(1)(a)(1) (Add. 6).^{1/} The case was transferred to the Central Division of the Boston Municipal Court for trial, and on January 5, 2017, Ms. Vallejo admitted to sufficient facts on the charge of operating under the influence of alcohol (Add. 4). The charge of leaving the scene of property damage was dismissed at the request of the Commonwealth (Add. 5).

Ms. Vallejo was placed on probation for one year, with restitution to be determined at a later hearing (Add. 5). The restitution hearing was held in the Central Division on February 23, 2017, before Judge Eleanor Sinnott (Add. 3). On March 1, 2017, Judge Sinnott issued an order in which she determined that Ms. Mansfield had already been fully compensated for the damage to her car, by virtue of a payment from Ms. Vallejo's insurance company for its full value (Add. 12). But the judge ordered that Ms. Vallejo pay her \$140 in order to compensate her for wages allegedly

^{1/}The Addendum attached to this application, which contains the trial court dockets and the judge's findings, will be cited as (Add.____).

lost on the day of the restitution hearing (Add. 12).

Ms. Vallejo timely filed a notice of appeal on March 23, 2017, and her appeal was docketed in the Appeals Court on April 24, 2017. She also filed a motion in the Central Division to stay the order of restitution pending appeal, which Judge Sinnott denied without a hearing on May 25, 2017 (Add. 1). A motion to stay filed in the Appeals Court was subsequently allowed by a single justice (Sacks, J.). Her brief in the Appeals Court was filed on July 21, 2017.

STATEMENT OF FACTS RELEVANT TO THE APPLICATION FOR
DIRECT APPELLATE REVIEW

The restitution hearing centered around two questions: the extent of compensable economic loss sustained by Ms. Mansfield, whose parked car was struck by Ms. Vallejo; and Ms. Vallejo's ability - or lack thereof - to pay restitution.^{2/} Only the facts related to the first question are summarized here.^{3/}

As Judge Sinnott found, it was uncontested that that Ms. Vallejo's insurance company deemed Ms. Mansfield's 2001 Honda Accord, which had an odometer reading of 133,942 miles on it, a total loss (Add. 9-

²The two women were the only witnesses at the hearing.

³On appeal, Ms. Vallejo also argues that the judge erred in concluding that she was able to pay \$140, despite the uncontroverted evidence that she was unable to work because of an injury, had no income, and was living in low-income housing.

10). The company therefore paid her \$5,100, which was the blue book value of such a car in "good" condition, plus sales tax (Add. 10). In the summer of 2016, Ms. Mansfield bought a more expensive car, a 2015 Chrysler 200 (Add. 10). It was uncontested that her use of a rental car during the time that she was without a car had been fully compensated (Add. 10).

Ms. Mansfield also claimed that she had spent thirty hours on the phone dealing with insurance companies, for which she sought compensation at the rate of twenty dollars an hour (Add. 12). She also sought compensation, at the same rate, for time that spent in court on four separate occasions, including the date of the restitution hearing itself (Add. 12).^{4/}

Judge Sinnott found that Ms. Vallejo had been appropriately compensated for the loss of her car, and concluded that she was not entitled to punitive damages or to restitution for time she spent at pretrial proceedings (Add. 12). Nonetheless, Judge Sinnott ordered Ms. Vallejo to pay Ms. Mansfield \$140 to compensate her for attending the restitution hearing itself (Add. 12).

⁴Ms. Mansfield also requested restitution for the difference in the excise tax on her new car as compared to her old car for five years, and for the difference in her insurance premiums for five years. Further, she sought punitive damages (Add. 12).

ISSUE PRESENTED

This case presents a novel issue in Massachusetts: whether a judge may properly order a defendant who has exercised her right to a restitution hearing to pay a victim for her attendance at that hearing. Defense counsel below argued that no restitution should be ordered; this issue is therefore preserved for review.

ARGUMENT

THIS COURT SHOULD HOLD THAT A DEFENDANT CANNOT BE ORDERED TO PAY RESTITUTION TO A VICTIM SIMPLY FOR ATTENDING THE RESTITUTION HEARING.

- A. No Massachusetts case has held that restitution may be ordered for lost wages arising from attendance at the restitution hearing itself, and other jurisdictions have declined to so hold in the absence of explicit statutory authority.

With certain exceptions specific to offenses not at issue here,^{5/} there is no statute in the Commonwealth governing the standards for imposition of restitution. See Commonwealth v. Denehy, 466 Mass.

⁵See, e.g., G.L. c. 266, § 37E(d) (person found guilty of identity fraud shall be ordered to make restitution for financial loss to victim, which may include costs incurred by victim in correcting credit history or satisfying a debt); G.L. c. 276, § 92A (person found guilty of motor vehicle theft shall be ordered to compensate the victim for financial loss, including "loss of earnings, out-of-pocket expenses, and replacement costs"); G.L. c. 266, § 27A (setting forth restitution standard for persons convicted of motor vehicle insurance fraud).

723, 736-737 (2014). A judge's power to order restitution derives from her power to order conditions of probation. Id. See also Commonwealth v. Henry, 475 Mass. 117, 121 (2016). As a matter of common law in Massachusetts, restitution is "limited to economic losses caused by the defendant's conduct and documented by the victim." Commonwealth v. McIntyre, 436 Mass. at 834. Such loss must "bear[] a significant relationship to the offense." Id. at 835. It is the Commonwealth's burden to prove the amount of loss, by a preponderance of the evidence. Commonwealth v. Nawn, 394 Mass. 1, 7-8 (1985).

As far as the defendant is aware, there is no Massachusetts case holding that restitution may be ordered for lost wages resulting from attendance at any court proceeding, let alone a restitution hearing.^{6/} Courts in other jurisdictions that have permitted such awards have done so where expressly permitted by

^{6/}Over fifteen years ago, this Court suggested that wages lost to attend court proceedings might sometimes be compensable, if "appropriately documented." Commonwealth v. Rotonda, 434 Mass. 211, 221-222 (2001). That case, however, presented no issue of lost wages. See id. (holding that restitution award of \$5,000 to victim of threats and civil rights violation was improper where "selected without regard to any fact other than whether it might 'satisfy' the victim"). The suggestion in Rotonda that lost wages might be compensable was "dictum." Commonwealth v. Casanova, 65 Mass. App. Ct. 750, 754 (2006).

statute. See, e.g., Taylor v. State, 45 P.3d 103, 106 (Okla. Crim. App. 2002) (authorizing restitution for time spent at court proceedings where statute specifically included "economic losses incurred as a consequence of participation in prosecution and proceedings related to the crime").

"Where the statutory scheme makes no allowance for such restitution, however, courts have not been inclined to expand the scope of statutorily-defined restitution." State v. Cummings, 214 W. Va. 317, 322 (2003) (holding that lost wages incurred while attending court proceedings were not compensable as restitution where not specifically authorized by statute), citing State v. Goodrich, 47 Wash. App. 114, 115 (1987) (where statute authorizes restitution for lost wages resulting from injury, restitution for lost wages for time spent in court was improper).

With respect to certain offenses, Massachusetts statutory law supports granting lost wages in some circumstances, though the parameters of such a restitution award have not been delineated in our caselaw. For example, a person convicted of stealing a motor vehicle is required to compensate the victim for "financial loss," including "loss of earnings." The statute does not specify, and the courts have not

determined, whether such lost wages are limited to those directly caused by the theft of the car, or also include wages lost to time spent in court. G.L. c. 276, § 92A.

There is no parallel statute permitting restitution for lost wages (of any kind) for operating under the influence of alcohol, the offense to which the defendant tendered an admission of sufficient facts. In the absence of explicit statutory authority, this Court should hold that restitution cannot be ordered for lost wages for time spent at the restitution hearing itself. That is, a defendant cannot be required to pay a victim seeking restitution for attending the restitution hearing.

B. The judge's order that the defendant compensate the victim for time spent at the restitution hearing interferes with the defendant's right to a restitution hearing, which adheres regardless of her poverty, and is inconsistent with widely-accepted principles in the analogous civil context.

This Court recently reiterated the right of a criminal defendant to a "reasonable and fair" procedure, including an evidentiary hearing, to determine the amount of the restitution order. Commonwealth v. Henry, 475 Mass. at 120, quoting Commonwealth v. Nawn, 394 Mass. at 6-7. In the same case, this Court emphasized "the fundamental principle

that a criminal defendant should not face additional punishment solely because of his or her poverty." Id. at 122.

Conditioning the defendant's right to a restitution hearing on payment for the victim's appearance at that hearing is inconsistent with these principles. It effectively charges the defendant a fee for access to the rights enunciated in Henry and Nawn. Such an approach forces a defendant like Ms. Vallejo to weigh her right to an evidentiary hearing - to establish her inability to pay any amount of restitution - against the risk that the hearing itself will require additional costs that she cannot pay. This reason alone should be dispositive to bar restitution for a victim's attendance.

Requiring a defendant to pay for a victim's attendance at the restitution hearing raises other practical concerns. The "prosecution should disclose prior to the hearing the amount of restitution it seeks." Id. at 120. If it fails to do so,^{7/} will a defendant who consequently seeks a continuance be required to compensate the victim for her appearance at

⁷As detailed in the defendant's brief, in this case the Commonwealth considerably increased the amount of restitution sought just two days before the hearing.

both hearings? When a reviewing court sides with a defendant in an appeal from a restitution order, and remands the case for further proceedings, will the defendant have to pay the victim again if she attends the remanded proceedings? The Commonwealth should not be permitted to rack up restitution awards in this way.

Finally, the judge's order that the defendant pay the victim for time spent at the restitution hearing is inconsistent with analogous and well-settled principles of civil tort actions. Massachusetts follows the "American Rule" in foreclosing recovery of litigation costs associated with such proceedings except where specifically authorized by statute. See Police Com'r of Boston v. Gows, 429 Mass. 14, 17 (1999).

"Underlying the rule . . . is the principle that no person should be penalized for defending or prosecuting a lawsuit. Moreover, the threat of having to pay an opponent's cost might unjustly deter those of limited resources from prosecuting or defending suits." Id., citing Fleischmann Distilling Corp. v. Maier Brewing Co., 386 U.S. 714, 718 (1967).^{8/} Similarly, a criminal

⁸In at least two states where restitution statutes define compensable damages as those recoverable in a civil action, courts have held that restitution cannot be awarded for time spent at the restitution hearing, given the American Rule. See State v. Brown, 342 P.3d at 243; Jackson v. State, 334 Ga. App. 340, 344 (2015).

defendant should not be deterred from contesting what may be an unsupported request for restitution - which, if ordered, will be administered as a condition of her probation, with all of the risks that entails, see Commonwealth v. Henry, 475 Mass. at 122 - because the hearing itself would require payment of additional costs.

STATEMENT OF REASONS WHY
DIRECT APPELLATE REVIEW IS APPROPRIATE

In Commonwealth v. Henry, this Court gave renewed meaning to a defendant's right to a hearing before restitution is ordered, at which she may contest the amount of actual loss to the victim or present evidence of her inability to pay. Conditioning the right to that hearing on compensation for the victim's attendance at it is incompatible with the principles that animated Henry. This Court should grant direct appellate review in order to address the novel and timely issue presented by this case, and should hold that defendants should not be discouraged from exercising their right to a restitution hearing by a requirement that they pay for it.

CONCLUSION

For the foregoing reasons, direct appellate review should be allowed.

Respectfully submitted,

MARIEZEL VALLEJO

By her attorney,

/s/ Rebecca Kiley

Rebecca Kiley

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August 2, 2017.

CERTIFICATE OF SERVICE

I, Rebecca Kiley, counsel for the defendant herein, do hereby certify on this 2nd day of August, 2017, I served this Application for Direct Appellate Review upon the Commonwealth by sending an electronic copy to Assistant District Attorney Jack Zanini, at jack.zanini@state.ma.us.

/s/ Rebecca Kiley

Rebecca Kiley

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Boston Municipal Court Department Central Division



Name	Mariezel Vallejo	Docket #	1504CR0522
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Date	May 25, 2017			
Attorney		ADA		APO
		Clerk		Judge
Defendant's Motion for Stay of Restitution Order Pending Appeal is rec'd/filed and denied without hearing Sinnott,J				
Copy of Order in hand to Atty Gallagher /JVC				

Date		
Tape#		
Footage		
Defendant In / Not In Court		
Attorney		
ADA		
APO		
Judge		
Clerk		

		Boston Municipal Court Department Central Division			
Name		mariezel Valledo		Docket #	
				1504CR0522	

MAR 23 2017 Defendants notice of appeal of Restitution order received and Filed

Date		Room#	Footage		Defendant In / Not In Court
Attorney		ADA	APO		
			Clerk		Judge
APR 21 2017 Assembly of Record on appeal Forwarded to the appeals court.					

Date	APR 27 2017		DEFAULT WARRANT ISSUED	
Tape#	17			
Footage	9:20, 10:30, 2:02	Default Removal Amended Oct 3		
Defendant In / Not In Court	PSR To Be Paid every month. if Restitution Not Paid			
Attorney	Gallagher	penalty to June 27		
ADA	Bannister	Per 17 Status		
APO	Jacobs	to go to Summit		
Judge	Byrne			
Clerk	JJB			

Date	MAY - 3 2017		Notice of entry of appeal Received From	
Tape#		the appeals court and filed.		
Footage				
Defendant In / Not In Court	5-17-17 Defendant's Motion for Stay of Restitution Order Pending Appeal is received and filed. DD			
Attorney				
ADA				
APO				
Judge				
Clerk				



Boston Municipal Court Department
Central Division



Name	Marizel Vallejo	Docket #	1504LR522
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Date	FEB 23 2017	Room#	15	Footage	10/12	Defendant In	Not In Court
Attorney	Gallagher	ADA	Nelli	APO		Ryan	
		Clerk	Kus	Judge	Levine, J		
Sent to Rm 14 to Go Before Sinnott, J							
Room 14 - 11:43 Restitution hearing Held							
12:17 Decision Reserved							
100 to March 20 own neg							

Date	Room 14 St. 140
Tape#	
Footage	
Defendant In / Not In Court	MAR 01 2017 Courts Findings on Restitution are Received and Filed.
Attorney	Restitution is Assessed in the
ADA	Amount of \$140 to be Paid
APO	within one month of this Day
Judge	All Parties Notified. Sinnott, J KN
Clerk	* EXHIBITS TO BE RETURNED

AND SIGNED FOR ON 3/20/17.

Date	MAR 20 2017
Tape#	17
Footage	10:23
Defendant In / Not In Court	Off's Motion for Reconsideration of Restitution Order Read/Filed - No action taken.
Attorney	Documentation from BHA read/filed. -
ADA	For every month that restitution is not paid the P.S.F. will be paid.
APO	Pers. Rec'd to April 27
Judge	Rm 17/St. 140
Clerk	To Go to Sinnott, J. Sinnott J/R

BOSTON MUNICIPAL COURT-CENTRAL DIVISION

DOCKET ENTRIES		ATTORNEY
Legal Counsel Fee Assessment		JESSICA
Legal Counsel Fee Contribution		GALLAGHER
Victim/Witness Fund Assessment		
Drug Analysis Fund Assessment		
Supervised Probation Fee		
		BAIL ONLY
MAY 17 2016 CASE REC'D IN BMC JULY		
SESSION FROM CHARLESTOWN COURT		
PERS TO JUNE 2,		SEE NO.
REC'G RM 10 - 1ST APPEARANCE		
ORDERED:		
- NOT TO OPERATE A MV IN COMMONWEALTH		
WITHOUT A VALID LICENSE (SUN)		
02 AUG	1-0 Defendant Not In Court	Gallagher Present
9:40	ADA Wright	APO Greene
pers to August 11		
Rec'd	Rm 10 - Trial	Horgan, FS/KUS
AUG 01 2016 Case called by Commonwealth		
Def't		
# 16	Defendant Not In Court	Atty Gallagher Present
Page 12	ADA [unclear]	APO [unclear]
over the c/w Object motion to change trial		
to status		
cont to Aug 11		
RM 10 - status		
		Grant. J. HERN

BOSTON MUNICIPAL COURT-CENTRAL DIVISION

DOCKET ENTRIES

AUG 11 2016

ape# 10 Defendant Not In Court Atty Gallagher

Footage 1000 ADA Wright Atty Lawlor

Pers. Recy September 29
PM 10 Trial

Grant J/om

SEP 29 2016

Kozak for Gallagher

ape# 15 Defendant Not In Court Atty Lawlor

Footage 1032 ADA Merck Atty Jurczak

100 to Jan 5 awn

recog

Bm 15 / trial

Kelly J/cg

JAN 05 2017

ape# 45 Defendant Not In Court Attorney Gallagher appear

@12:33 Footage 1107 ADA Merck Atty Jurczak P.O. Lyth Appeal

Tender of Plea Filed (Accepted) Rejected Defendant Waives His Right to a Jury Trial and Admitted Guilt Knowingly, Willingly, Intelligently and Voluntarily

Alien Warning Given PLEA COLLOQUY GIVEN Dismissed At Fee Request of Commonwealth With Consent of Defendant

Costs Counts #1 and #2 - Request of Commonwealth With Consent of Defendant
Costs Count #3 - CEFS-CWOF Until JAN 3, 2018 - 24D Disposition
45 Day Loss of License. Last Drink at Private Residence.

Following Fees Apply: 1) Head Dy. \$50. 2) CPD \$50 3) Sundry \$50. 4) Vic With \$50
5) LCF \$150 and 6) Prob Supr @ 65/month which is waived if in Program and Paying
Restitution of at least \$100/month.

100 awn to Feb 23, 2017 Room 15 Full Restitution Hearing - to be paid
during the term of the CWF. Sennett JHB.

CRIMINAL DOCKET		DOCKET NUMBER	NO. OF COUNTS	Trial Court of Massachusetts BMC Department	
DEFENDANT NAME AND ADDRESS Mariezel Vallejo 73 Bunker Hill Street Charlestown, MA 02129		DOB 02/16/1979	GENDER Female	COURT NAME & ADDRESS BMC Charlestown 3 City Square Charlestown, MA 02129	
		DATE COMPLAINT ISSUED 12/21/2015	INTERPRETER REQUIRED		
		PRECOMPLAINT ARREST DATE 12/18/2015			
FIRST FIVE OFFENSE COUNTS					
COUNT	CODE	OFFENSE DESCRIPTION			OFFENSE DATE
1	90/24/C	LEAVE SCENE OF PROPERTY DAMAGE c90 §24(2)(a)			12/18/2015
2	90/24/I	ALCOHOL IN MV, POSSESS OPEN CONTAINER OF * c90 §24I			12/18/2015
3	90/24/J	OUI-LIQUOR OR .08% c90 §24(1)(a)(1)			12/18/2015
DEFENSE ATTORNEY <i>E. Pellegrino</i>		OFFENSE CITY/TOWN Boston	POLICE DEPARTMENT Boston PD - Area A-1		
DATE & JUDGE	DOCKET ENTRY		DATE & JUDGE	FEES IMPOSED	
12/21/15 <i>McCollum</i>	<input checked="" type="checkbox"/> Attorney appointed (SJC R. 3:10) <input type="checkbox"/> Atty denied & Defl. Advised per 211 D §2A <input type="checkbox"/> Waiver of Counsel found after colloquy Terms of release set: <input checked="" type="checkbox"/> Bail <input type="checkbox"/> See Docket for special condition <input type="checkbox"/> Hold (276 §58A)		12/21/15	Counsel Fee (211D § 2A§2) \$ <i>150</i> <input type="checkbox"/> WAIVED Counsel Contribution (211D § 2) <input type="checkbox"/> WAIVED Default Warrant Fee (276 § 30§1) <input type="checkbox"/> WAIVED Default Warrant Arrest Fee (276 § 30 §2) <input type="checkbox"/> WAIVED Probation Supervision Fee (276 § 87A) <input type="checkbox"/> WAIVED Bail Order Forfeited Advised of right to jury trial: <input type="checkbox"/> Waiver of jury found after colloquy <input type="checkbox"/> Does not waive Advised of trial rights as pro se (Dist. Ct. Supp.R.4) Advised of right of appeal to Appeals Ct. (M.R. Crim P.R. 28)	
12/21/15 <i>McCollum</i>	Arraigned and advised: <input checked="" type="checkbox"/> Potential of bail revocation (276 §58B) <input type="checkbox"/> Right to bail to review (276 §58) <input type="checkbox"/> Right to drug exam (111E § 10) <input type="checkbox"/> Inquiry made by Court under 276 § 58A Abuse Allegation: <input type="checkbox"/> C276 § 58A form filed by Commonwealth <input type="checkbox"/> Allegation of abuse under C276 § 56A found <input type="checkbox"/> No allegation of abuse under C276 § 56A found				
SCHEDULING HISTORY					
NO.	SCHEDULED DATE	EVENT	RESULT	JUDGE	TAPE START/STOP
1	12/21/2015	Arraignment	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	1/14/16 PTH	<i>McCollum</i>
2	1/14/16	PTH	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	2/5/16 PTH	<i>McCollum</i>
3	2/5/16	PTH	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	2/12/16 PTH	<i>McCollum</i>
4	2/12/16	PTH	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	3/1/16 DCE	<i>McCollum</i>
5	3/1/16	DCE	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input checked="" type="checkbox"/> Cont'd	4/27/16 PTH	<i>McCollum</i>
6	4-27-16	DCE	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	5-13-16 SRE	<i>McCollum</i>
7	5-13-16	SRE	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	6-2-16 FAT	<i>Grant, L.</i>
8			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
9			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
10			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
APPROVED ABBREVIATIONS					
ARR = Arraignment PTH = Pretrial hearing CCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SRE = Status review SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance without finding scheduled to terminate PRO = Probation scheduled to terminate DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WVR = Warrant or default warrant recalled PVH = probation revocation hearing					
A TRUE COPY ATTEST:		CLERK-MAGISTRATE / ASST CLERK		TOTAL NO. OF PAGES	ON (DATE)
		<i>X</i>			

CRIMINAL DOCKET - OFFENSES		DEFENDANT NAME Marlezel Vallojo		DOCKET NUMBER 1504CR000522	
COUNT / OFFENSE 1 LEAVE SCENE OF PROPERTY DAMAGE c90 §24(2)(a)				DISPOSITION DATE AND JUDGE	
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT	SURFINE RESTITUTION	COSTS V/W ASSESSMENT	OUI §24D FEE BATTERER'S FEE
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (275 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated; defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE	DATE
COUNT / OFFENSE 2 ALCOHOL IN MV, POSSESS OPEN CONTAINER OF * c90 §24I				DISPOSITION DATE AND JUDGE	
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT	SURFINE RESTITUTION	COSTS V/W ASSESSMENT	OUI §24D FEE BATTERER'S FEE
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (278 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated; defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE	DATE
COUNT / OFFENSE 3 OUI-LIQUOR OR .08% c90 §24(1)(a)(1)				DISPOSITION DATE AND JUDGE	
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and alien warning pursuant to C278§29D and MRCrP12 <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT HEAD INJURY ASMT	SURFINE RESTITUTION	COSTS V/W ASSESSMENT	OUI §24D FEE BATTERER'S FEE
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (278 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated; defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE	DATE

CRIMINAL DOCKET DOCKET ENTRIES		DEFENDANT NAME Marlezel Vallejo	DOCKET NUMBER 1504CR000522
DATE	DOCKET ENTRIES		
12/21/15	ordered not to operate a MV under pains & penalties of contempt not to operate a mv in the commonwealth without a valid license or right to drive motorcycle.		
2/17/16	protest on former report filed		
2/18/16	defendant files motion per return of property allow with no objection from the commonwealth.		
3/14/16	order to be paid or waived by 4/4/16		
3/14/16	discovery by 4/19/16 if not forthcoming defendant to notify commonwealth is advised - McCormick J.		
4-27-16	Δ not in court for call of list. Δ was defaulted warrant held until 5-13-16 SRE (McCormick, J.)		
1/26/17	Brought forward program for review. PSF provided note severe financial hardship. (reality)		

APPROVED ABBREVIATIONS
 ARR = Arraignments PTH = Preliminary hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCV = Probable cause hearing MOT = Motion hearing SRE = Status review
 SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance-without-finding scheduled to terminate PRO = Probation scheduled to terminate
 DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued VR = Warrant on default warrant recalled PVH = probation revocation hearing



COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Boston Municipal Court
1504CR522

COMMONWEALTH

v.

MARIEZEL VALLEJO

RESTITUTION HEARING FINDINGS

On January 5, 2017, Ms. Mariezel Vallejo admitted to sufficient facts on the charge of “Operating Under the Influence of Intoxicating Liquor.” The date of the offense was December 21, 2015. Charges of Leaving the Scene of Property Damage and Possession of Open Container of Alcohol in a Motor Vehicle” were dismissed upon the conclusion of the plea colloquy.

The Prosecutor had recommended a CWOFF for 1 year with the 24D program, 45 Day Loss of license and restitution in the amount of \$15,167.25. The Court accepted the Defendant’s recommendation which mirrored the Prosecutor’s recommendation, except that it stated as a condition that full restitution would be determined at a restitution hearing, “which will be paid during the CWOFF.”¹

Ms. Vallejo admitted to hitting a parked car, a 2001 red Honda Accord and causing damage to it when she was under the influence of alcohol. The 2001 red Honda Accord is owned by Virginia Mansfield. Ms. Mansfield is seeking restitution

“A judge may order a defendant to pay restitution to the victim as a condition of probation provided that the ‘[r]estitution is limited to economic losses caused by the defendant’s conduct and documented by the victim.’” *Commonwealth v. Henry*, 475 Mass. 117, 120 (2016)

¹ Tender of Plead dated January 5, 2017.

12/21/2017
Received
Filed
KW

(citations omitted). Where, as in this case, “the defendant does not stipulate to the amount, the judge should conduct an evidentiary hearing at which ‘the Commonwealth bears the burden of proving by a preponderance of the evidence the amount of the victim’s losses.’” *Id.* (citation omitted).

On February 23, 2017, a restitution hearing was held. Both Ms. Mansfield and Ms. Vallejo testified at the hearing and provided documents. It is uncontested that Ms. Vallejo’s insurance company, Arbella Insurance Group (Arbella), assessed the damage to Ms. Mansfield’s vehicle as a total loss, and Arbella paid Ms. Mansfield the blue book value for her 2001 Honda Accord. She was also paid an additional \$300 for sales tax, for a total of 5,100.00.² It is also uncontested that Ms. Mansfield’s use of a rental car during the time she was without use of her car was fully compensated by Arbella. Ms. Mansfield states in her letter to all concerned parties in support of her request for restitution that her 2001 Honda Accord, “would have lasted several more years as it was in safe and running condition.”³ However, the Arbella Claim Summary states that the car repair “shop state[s] that fuel tank straps and motor are rusted, would likely break during the [repair] required for subframe, vehicle should be a total loss.”⁴ Despite that an odometer reading of “133,942,”⁵ Arbella assessed the 2001 Honda Accord condition as “Good” and compensated her as such.

Ms. Mansfield signed a contract in the summer of 2016 for a car to replace her 2001 Honda Accord. She brought from Enterprise Rent-A-Car Company, a 2015 Chrysler 200.⁶ She put a down payment of \$3800.00 and financed \$11,367.25.⁷

² Letter to Ms. Mansfield from Arbella, dated February 13, 2017.

³ Letter “To all concerned parties,” dated February 21, 2017.

⁴ Arbella Claim Summary, p. 2, under “Comments.”

⁵ Arbella Claim Summary, p. 1, under “Vehicle Information.”

⁶ In all the paperwork provided, none showed the odometer reading of the 2015 Chrysler.

⁷ Vehicle Sales Contract and Letter “To all concerned parties,” dated February 21, 2017. Her financing is at 12.91% and the total amount she will pay after all payments are made after 5 years would be \$16,478.64.

Ms. Mansfield is requesting restitution to include the difference in the following payments: 1) the difference between the blue book value she received of \$5100.00 for her 2001 Honda and \$20,278.64 that will be the total cost for her 2015 Chrysler; 2) the difference in Boston excise tax for 5 years; and 3) the difference in her insurance premiums for 5 years. She is also seeking \$500 in lost wages⁸ for court and 30 hours x \$20/hour for time spent dealing with the insurance company.

Ms. Mansfield also requests punitive damages. She states that her family struggles with costs associated with care for her oldest son who suffers with autism and that her husband lost his job in 2012 and has yet to find employment, hence money has been an issue. It was stressful for her to deal with the insurance company as well as the associated worry. Ms. Mansfield is undeniably in a difficult personal situation and this Court does not doubt that this car situation exacerbated her stress. The remedy, however cannot be restitution, which does not include punitive damages, only economic damages. *See Henry*, 475 Mass. at 120. For that same reason, Ms. Mansfield is not entitled to restitution for the 30 hours of her personal time dealing with the insurance company and her “worry (pain/suffering) and undeserved stress as well as other personal issues, dealing with this.”⁹

The letter to Ms. Mansfield from the insurance company states that “we settled the total loss of your vehicle with you....” It is reasonable to infer that there would have been settlement documents or releases associated with that settlement that would have clarified whether by accepting the settlement the Ms. Vallejo was released from further financial obligation. No such documents were provided.

⁸ Ms. Mansfield claims that she had to schedule time off from her employment at the Massachusetts Bar Association Insurance Agency, Inc., 25 hours at \$20/hour. Letter “To all concerned parties,” dated February 21, 2017.

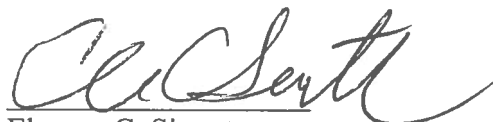
⁹ Letter “To all concerned parties,” dated February 21, 2017.

A 2015 Chrysler 200 and a 2001 Honda Accord are not comparable vehicles. Of course a 2015 vehicle will be considerably more expensive and have greater attendant costs, i.e. insurance premiums and excise tax, than for a 2001 vehicle. For restitution, Ms. Mansfield is only entitled to be fairly compensated for the fair market value of the 2001 Honda Accord. It appears that Arbella provided her with the blue book value of the car. There was no evidence provided to show why she is entitled to more than that value and, if so, how much more.

Ms. Mansfield states she was summoned three times for court appearances and wants to be compensated financially for the time she had to schedule time off from her employment. Her obligation to show up at the criminal trial of Ms. Vallejo is an obligation separate from that of her restitution. However, for the 7 hours of missed work for the date of the restitution hearing, on February 23, 2017, this Court credits her testimony and finds for her in the amount of 7 hours x \$20/hour for a total of \$140.

For the reasons stated above, this Court assesses restitution in the amount of \$140.00¹⁰ to be paid within one month of this date. For any claimed damages beyond the \$140 allowed by this Court, Ms. Mansfield will have to pursue civil remedies.

By the Court



Eleanor C. Sinnott
Justice

Dated: March 1, 2017

¹⁰ Ms. Vallejo provided documentation that she has a back injury that resulted while at work so she is not presently working. However, there is no documentation regarding whether she is receiving benefits from work or otherwise. This Court finds that she can pay the \$140. If she needs more than a month to pay, additional documentation will need to be provided.